STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
TTY 711 or 800-833-6388 (for the speech or hearing impaired)

May 5, 2006

REGISTERED MAIL

Ben Brown
Department of Transportation
Northwest Region
P.O. Box 330310
Seattle, WA 98133-9710

RE: Water Quality Certification # 3268 and Coastal Zone Management consistency determination for Corps Public Notice No. 200500927 to increase roadway capacity on State Route 539 from Horton Road to Tenmile Road in Whatcom County, Washington

On August 8, 2005, the Washington State Department of Transportation (WSDOT) submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed SR 539 from Horton Road to Tenmile Road project. The project proposes to increase roadway capacity by widening SR 539 between Horton Road and Tenmile Road, replacing two bridges and six culverts, and relocating utilities. In addition, work includes building stormwater treatment facilities and establishing a wetland mitigation site and a stream mitigation site. The U.S. Army Corps of Engineers issued the project's public notice on March 1, 2006.

On behalf of the State of Washington, Ecology certifies that the work proposed in the JARPA Ecology received on August 8, 2005 and the public notice complies with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and other appropriate requirements of state law. This certification is subject to the conditions contained in the enclosed Order.

On January 23, 2006, WSDOT submitted to Ecology a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with WSDOT's determination that this work is consistent with the approved Washington State CZMP. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the federal Water Pollution Control Act.

This letter also serves as a State response to the Corps of Engineers' Public Notice. The enclosed Order may be appealed by following the procedures described in the Order.

If you have any questions, please contact Rebecca Ponzio, the Federal Project Coordinator for this project, at (425) 649-7181 or rpon461@ecy.wa.gov.

Sincerely,

Brenden McFarland, Section Manager
Shorelands and Environmental Assistance Program

BM:rp:mw
Enclosure

cc: Amanda Azous, Department of Transportation
Christina Martinez, Department of Transportation
John Maas, Department of Transportation
Don Ponder, Department of Fish & Wildlife
Jim Fraser, Department of Fish & Wildlife
Jack Kennedy, Corps of Engineers
Kim Harper, Ecology
Jerry Shervey, Ecology

e-cc: Penny Keys, Ecology
Loree' Randall, Ecology

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Washington State Department of Transportation – Northwest Region in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	)	**ORDER # 3286 Corps Reference No. 200500927 Widen SR 539 from Horton Road to Tenmile Road, reconstruct two bridges, improve intersections, replace six culverts, provide stormwater facilities, and construct a wetland mitigation site and a stream mitigation site in the Nooksack River watershed in Whatcom County, Washington.**

TO: Washington State Department of Transportation
Attn: Ben Brown
P.O. Box 330310
Seattle, WA 98133-9710

On August 8, 2005, the Washington State Department of Transportation (WSDOT) – Northwest Region submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification for the SR 539, Horton Road to Tenmile Road project. A public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on March 1, 2006.

The proposed project is located on State Route (SR) 539 between Horton Road and Tenmile Road on the north side of Bellingham in Whatcom County, Washington, which is in Sections 1, 13, 24, 25, 36, 6, 18, 19, 30, and 31; Township 38 North and 39 North; Range 2 East and 3 East. The proposed project entails widening SR 539 between Horton Road and Tenmile Road. The existing roadway is a two-lane highway and the proposed project will expand it to a four-lane highway, along with replacing two bridges and the existing six culverts within this corridor, and relocating the utilities. In addition to the roadway expansion, the proposed project includes building stormwater treatment facilities along the highway, including filter strips, wet ponds, and detention ponds. The project will permanently impact 0.24 acres of stream and 0.02 acres of stream buffer and permanently impact 6.67 acres of wetland and 5.97 acres of wetland buffers.

The proposed project is located in Water Resource Inventory Area (WRIA) No. 1 (Nooksack) in the Nooksack River watershed. Work is located within or adjacent to a tributary to Squalicum Creek, a tributary to Silver Creek, Deer Creek, Tenmile Creek, and Fourmile Creek, along with wetlands within the project area. Stream impacts will be mitigated by restoring 0.16 acres of stream along Silver Creek on the Larson Mitigation Site located at the corner of SR 539 and Larson Road. Compensatory mitigation for wetland impacts associated with the roadway project will occur at the Sterk Mitigation Site located along Tenmile Creek at the corner of Tenmile Road and Chasteen Road. The Sterk Mitigation site will re-establish/create a minimum of 14.39 acres of wetland and enhance a minimum of 0.96 acres of wetland.

AUTHORITIES

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 303, 306 and 307);

2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and

3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve Washington State Department of Transportation from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions

1. For purposes of this Order, the term "Applicant" shall mean Washington State Department of Transportation, Northwest Region (WSDOT), and its agents, assignees and contractors.

2. For purposes of this Order, all submittals required as conditions shall be sent to Ecology's Northwest Region, Attn: Federal Project Coordinator – MAP Team, 3190 160th Avenue SE, WA 98008-5452. Any submittals shall reference Order No. 3286 and Corps No. 200500927.

3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on August 1, 2005. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.

4. Within 30 days of receipt of an updated JARPA, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.

5. This Order shall be rescinded if the Army Corps of Engineers does not issue a Section 404 permit.

6. This Order does not exempt, and is provisional upon, compliance with other statutes and codes administered by federal, state, and local agencies.

7. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.

8. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.

9. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts or violations of the water quality standards not authorized by this Order occur due to project construction or operation are identified, or if additional conditions are necessary to further protect water quality.

10. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project and/or mitigation sites.

11. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.

12. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars ($10,000.00) per violation per day for each day of continuing noncompliance.

B. Notification Requirements

1. Notification shall be made to Ecology's Federal Project Coordinator – MAPT at 425-649-7181, Fax 425-649-7098, mail 3190 – 160th Avenue SE, Bellevue, WA 98008-5452, or email at rpon461@ecy.wa.gov for the following activities:
   a. At least 10 days prior to the pre-construction meeting;
   b. At least 10 days prior to the onset of initiating work on project site;
   c. At least 5 days prior to disabling of the drain tile system on the Sterk Mitigation Site;
   d. At least 10 days prior to subsequent construction on the Sterk Mitigation Site (i.e. work subsequent to disabling the drain tile system);
   e. At least 10 days prior to the construction of the Larson Road Mitigation Site;
   f. At least 10 days prior to initial in-water work activities;
   g. At least 5 days prior to pier removal activities;
   h. Immediately following a violation of the state water quality standards or conditions of this Order.

   NOTE: These notifications shall include the applicant's name, project name, project location, the number of this Order, contact name, and contact's phone number.

C. Water Quality

1. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (173-201A WAC), ground water standards (173-200 WAC) or sediment quality standards (173-204 WAC).

2. The reach of Deer Creek downstream of the proposed project has been listed on the current 303(d) list as exceeding state water quality standards for pH and ammonia. The reach of Silver Creek within the project vicinity has been listed on the current 303(d) list as exceeding state water quality standards for dissolved oxygen and fecal coliform bacteria. The reach of Tenmile Creek downstream of the project has also been listed on the current 303(d) list as exceeding dissolved oxygen. Certification of this proposal does not authorize further exceedances of these standards.

3. The reaches of Tenmile Creek, Fourmile Creek, Stream 0143 (tributary to Silver Creek), and Deer Creek are tributaries to the Nooksack River and are classified as Class A waterbodies, and the reach of Stream 0553 (tributary to Squalicum Creek) is a tributary to Bellingham Bay and is a Class A waterbody. The Class A water quality standards of 173-201A-030(2) apply.

Monitoring

4. The Applicant shall submit a Water Quality Monitoring Plan (Plan) for review and approval to the Federal Project Coordinator at least twenty (20) days prior to beginning in-water work. Activities that are required to be monitored are not authorized to be conducted until approval is received. This Plan shall include the following information:
   a) Name(s) and phone number(s) of person(s) responsible for monitoring;
   b) Map with numbered or named sampling locations associated with the in-water activities for each stream. Include the background and the point of compliance (100, 200, or 300 feet downstream from point of activity);
   c) Parameters to be monitored: turbidity and pH;
   d) A description of the Best Management Practices (BMPs) that will be used on the project to protect water quality, including a description of procedures for concrete pouring and pile removal activities;
   e) Project activities that shall be monitored (i.e. turbidity for in-water work and pH during concrete pouring over, in, and adjacent to water);
   f) Sample frequency for each activity to be monitored; and
   g) Example of monthly summary report

5. Any changes to the Plan must be approved in writing by Ecology.

6. Monitoring results shall be submitted monthly to the Federal Project Coordinator per Condition A.2.

7. If monitoring results show that water quality standards are not being met, the Applicant shall modify or stop the activity causing the problem and commence hourly monitoring until standards are met for two (2) consecutive sample periods.

8. All monitoring results shall be kept onsite and submitted to Ecology upon request.

9. Mitigation and/or additional monitoring may be required if water quality standards are not met.

D. Construction Conditions

1. The Applicant shall comply with and implement the conditions of the National Pollutant Discharge Elimination System Waste Discharge Permit No. WA-003211-5 (NPDES Permit) by Ecology for this project.

2. All in-water work shall comply with the fish windows of the most current Hydraulic Project Approval (HPA) by Washington State Department of Fish and Wildlife.

3. Within the project limits, the Applicant shall mark all clearing limits that occur within 500 feet or less of sensitive aquatic areas, including buffers, with highly visible

construction fence prior to beginning clearing or other construction activities in that area. Equipment shall enter and operate only within the delineated clearing zones, corridors, and stockpile areas.

4. If any wetlands, wetland buffers, streams, or stream buffers are temporarily impacted by the project, these areas shall be protected from erosion as specified in the NPDES permit. These sensitive aquatic areas shall be replanted with native vegetation within the first appropriate planting season after construction is completed.

5. Work in or near waters of the state shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts.

6. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.

7. During removal of underground tanks, the Applicant shall test for contaminated material. If at any time, the Applicant finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the Applicant shall immediately notify Ecology's Northwest Regional Spill Response Office at 425-649-7000.

Culvert Work

8. Concrete process water shall not enter surface waters of the state. All concrete shall be completely cured prior to coming into contact with state surface waters. Any contact water discharged from the confined area with curing concrete shall be routed to upland areas to be treated and infiltrated, or disposed of appropriately with no possible entry to state waters.

9. All culvert work shall be conducted in the dry or in isolation from stream flow by installing a bypass flume or culvert, or by pumping the stream flow around the work area. The stream diversion system shall be designed and operated so as to not cause erosion or scour in the stream channel or on the banks of the waterbody in which work is being conducted.

10. Prior to returning stream flow to the de-watered work area, all bank protection and/or armoring shall be completed.

11. Temporary sediment traps shall be cleaned out and the settled sediments removed from the stream channel before removing any stream diversion system and returning the flow of the stream to its natural channel. Settled sediments shall not be allowed to enter waters of the state, including wetlands, due to water or runoff flows that may occur during or after construction is completed.

12. Reintroduction of water to the channel shall be done gradually and at a rate not higher than the normal stream flow in order to minimize the mobilization of sediments and fines into downstream waters.

13. Upon completion of the project, all materials used in the temporary bypass, or other method of work area isolation, shall be removed from the stream and stream buffer. The work area shall then be restored according to the Temporary Impact Restoration Plans in the Final Draft Wetland & Stream Mitigation Report dated March 2006.

14. Culverts shall be installed and maintained to avoid stream scouring and to prevent erosion of stream banks within and downstream of the project.

Bridge Removal and Replacement

15. All construction debris resulting from the removal of Tenmile Creek Bridge and Fourmile Creek Bridge along SR 539 shall be properly disposed of to prohibit its entrance into waters of the state. Incidental debris shall be removed from Tenmile Creek and Fourmile Creek.

16. Piles removed from substrate shall be moved immediately from the stream onto an upland area. The piles shall not be shaken, hosed-off, left hanging to drip, nor shall any other action be taken that is intended to clean or remove adhering material from the pile while in or over the water.

17. During pile removal, a containment boom and absorbent pads shall be placed around the perimeter of the work area to capture wood debris and other material released from the operation. All accumulated debris shall be collected and properly disposed of to prohibit its entrance into waters of the state.

18. Equipment used for any in-water work shall be free of external petroleum-based products, and this equipment shall be checked daily for leaks while working around water of the state. Any necessary repairs shall be completed prior to commencing work activities.

19. If bridge removal activities involve saw cutting of concrete, containment methods are required to control and contain all affected water and debris. The water shall be disposed of upland with no possibility of entry to Tenmile Creek or Fourmile Creek or other waters of the state. All debris shall be properly disposed of to prohibit its entrance into waters of the state.

20. Adequate containment shall be used for any mechanical equipment on a structure over water, such as a temporary work bridge or platform, in order to prevent any spills and/or discharges of contaminants to waters of the state.

21. Measures shall be used to minimize disturbance of vegetation when removing and constructing the bridges, including construction of any temporary work platforms.

22. All disturbed areas resulting from bridge removal and construction of the new bridges shall be adequately stabilized within seven (7) days after bridge work is completed so as to prevent erosion or sediment debris from entering waters of the state, including wetlands.

E. Wetlands Mitigation and Monitoring

1. Impacts to aquatic resources shall be mitigated as described in the *Final Draft Wetland & Stream Mitigation Report, SR 539 Widening Project: Horton Road to Tenmile Road* prepared by Washington State Department of Transportation, dated March 2006, or as revised in the approved final mitigation plan. The final draft report applies to two sites: the Sterk and the Larson Road mitigation sites. This report shall be considered the final approved plan for the Larson Road site, but for the Sterk site, Ecology shall require submittal of a final mitigation plan for review and approval.
2. A final mitigation plan shall be submitted to Ecology for review and approval no later than 60 days prior to beginning construction of the Sterk mitigation site.
3. Condition E.2. of this Order shall apply to all construction actions at the Sterk mitigation site except for those necessary to disable the existing drain tile system, provide for related sediment and erosion control, install hydrology monitoring devices, and other related actions.
4. The existing drain tile system at the Sterk mitigation site shall be effectively disabled, so that the system is no longer draining, prior to the occurrence of any wetland impacts within the entire project area.
5. A minimum of nine months of hydrology monitoring data from the Sterk mitigation site shall be submitted to Ecology for review no later than 60 days prior to beginning construction of the mitigation site.
6. In the event that the Applicant determines it is unable to acquire the Sterk mitigation site to provide compensatory mitigation for wetland impacts for this project, then a mitigation plan for an alternative site shall be submitted to Ecology. The applicant shall notify Ecology of its intent to use the Sterk site or shall identify an alternative site within one year of the date of issuance of this Order. No wetland impacts within the project area shall occur prior to approval of the mitigation plan for the alternative site.
7. Any changes to the approved final mitigation plan, beyond minor modifications, shall be submitted in writing to Ecology's Federal Project Coordinator for approval.

<u>Mitigation Construction</u>

8. Installation of the mitigation sites shall be completed prior to completing construction of

the road improvement component of the project.

9. Appropriate and effective BMPs shall be installed on the mitigation sites prior to commencing any earthwork so as to minimize erosion, turbidity, and other water quality impacts to water bodies on or downstream of the mitigation sites.
10. All excess excavated material from the mitigation sites shall be disposed of offsite in an appropriate location outside of sensitive areas and their buffers, and shall be stabilized or contained so as to prevent its entry into waters of the state.
11. No materials shall be stockpiled within the wetlands or streams on the mitigation sites.
12. Appropriate BMPs shall be implemented to minimize track-out during construction at the mitigation sites.
13. All earth areas that have been exposed or disturbed on the mitigation sites shall be stabilized within seven (7) days of completion of grading to prevent erosion by using mulch or equivalent. If seeding is the selected erosion control method, then the seed mix shall consist of native grasses and forbs.
14. Upon completion of grading on the mitigation sites, and prior to planting, the applicant shall provide written confirmation to Ecology that finished grades are consistent with the mitigation plan or other subsequent Ecology-approved modifications to grading plans (e.g. signed letter or memo from the surveyor, wetland biologist, or project engineer indicating how final elevations were confirmed and whether they are consistent with the plan).
15. An as-built report documenting the final conditions of the mitigation sites shall be prepared when construction and planting of the mitigation sites are completed. The report shall include the following:
    - final site topography with site boundaries clearly marked;
    - dates of implementation, including dates of grading, planting, and final completion;
    - plan sheets showing what plants were installed including species, densities, sizes, approximate locations of plants, and plant sources;
    - habitat features (snags, large woody debris, etc) and their locations;
    - other plan features;
    - planned locations of sampling and monitoring sites, if known;
    - photos documenting baseline conditions (mark photo points on as-built plan);
    - any changes to the plan that occurred during construction – include the problems that were encountered, what was done to correct them, and reasons for the changes;
    - any follow-up actions if needed and planned schedule for those actions; and
    - responsible parties (designer, construction contractors, planting contractor) and indication of whether a qualified wetland professional or other responsible party was on-site during construction.
16. The as-built report shall be sent to Ecology's Federal Project Coordinator within 180 days

of construction and planting completion of all mitigation sites. If plants are installed more than 180 days after construction of the mitigation sites, or planting is to be sequenced over time, two reports shall be submitted: the first a brief report on the construction phase summarizing any changes from the mitigation plan and submitted within 180 days of completion of grading, and the second a final as-built report to be prepared after the planting is completed.

Mitigation Monitoring & Maintenance

17. All plantings at the mitigation sites shall be watered and otherwise maintained as necessary to meet performance standards as stated in the mitigation plan.
18. When needed to meet the performance standards stated in the mitigation plan, dead or dying plants shall be replaced during the first available planting season with the same species or a native plant alternative that is appropriate for the location. The species, numbers and approximate locations of all replanted material shall be noted in the subsequent monitoring report.
19. The Applicant shall comply with the most current applicable NPDES permit for Aquatic Noxious Weed Control if herbicides are selected to control invasive species at the mitigation sites. Methods used in areas within 20 feet of creeks shall be limited to localized application such as backpack sprayer or hand wicking. Application of herbicides shall occur only in dry weather.
20. Monitoring of the wetland mitigation sites will occur for a minimum of 10 years, with monitoring performed in years 1, 3, 5, 7 and 10. If a performance standard for monitoring years 1 through 7 is not met, the Applicant shall present to Ecology the probable reasons for non-attainment and shall submit for approval a proposed plan of action. Ecology will determine whether remedial actions should be taken, additional wetland mitigation is needed, or the performance standard should be adjusted.
21. If, at monitoring year 10, all required performance standards have not been met, then Ecology may require additional monitoring and/or additional wetland mitigation area.
22. Any changes to the wetland monitoring plan must be approved in writing by Ecology.

F. Timing Requirements

1. This Order is valid until all compliance requirements in this document have been met.

2. The Applicant shall reapply with an updated application if the information contained in the Corps of Engineers' Public Notice received March 1, 2006 and the JARPA received August 1, 2005 is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined in the public notices, or has not been approved by Ecology, is not authorized by this Order. All future

actions shall be coordinated with Ecology for approval prior to implementation of such action.

G. Emergency/Contingency Measures

1. The Applicant shall develop a spill prevention and containment plan for this project and shall have spill cleanup material available on site at all times during construction.

2. Any work that is out of compliance with the provisions of this Order, or producing conditions that are causing distressed or dying fish, or causing any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters is prohibited. If such work occurs, the Applicant shall comply with WSDOT's Instructional Letter 4055.00 Environmental Compliance Assurance Procedure for Construction projects and Activities (March 10, 2003) and immediately take the following actions:
   a. Cease operations at the location of the violation;
   b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage;
   c. In the event of finding distressed or dying fish, collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the Applicant receives further instructions from Ecology. Ecology may require analyses of these samples before allowing the work to resume.
   d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible. This work shall take precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
   e. Immediately notify Ecology's Northwest Regional Spill Response Office at 425-649-7000 [SoWI]of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.

H. Appeal Process

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2

P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:
The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, Washington 98504-7608.

In addition, please send a copy of your appeal to:
Federal Permit Appeals Coordinator
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

For additional information: Environmental Hearings Office Website: http://www.eho.wa.gov

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated May 5, 2006 at Olympia, Washington.

Brenden McFarland, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

Attachment A:
Water Quality Certification Order # 3268
Statement of Understanding

I, _____, state that I will be involved as an agent or contractor for Washington State Department of Transportation in widening SR 539, Horton Road to Tenmile Road, MP 1.73 to MP 6.13, Whatcom County, Washington.

The Washington State Department of Transportation (WSDOT) is proposing to increase roadway capacity by widening SR 539 between Horton Road and Tenmile Road, replacing two bridges and six culverts, and relocating utilities. In addition, work includes building stormwater treatment facilities and establishing a wetland mitigation site and a stream mitigation site. This work will result in 0.24 acres of permanent stream impact, 6.67 acres of permanent wetland impact, and 5.97 acres of permanent wetland buffer impact.

I further state that I have read and understand the relevant conditions of Washington State Department of Ecology Water Quality Certification Order # 3268 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

_____ _____
Signature Date

_____ _____
Company Phone Number

_____
Address

_____
City, State, and Zip Code